

#### REMARKS

This paper is in response to the Office Action dated December 1, 2008. Claim 1 is amended hereby without prejudice to the subject matter involved. Claims 1 and 4 – 13 are in the application upon entry of this amendment. Entry of this amendment, reconsideration and reexamination of the above-identified application are respectfully requested.

The Examiner is requested to enter and consider this Amendment even though presented after final rejection since the amendments narrow the scope of the claims, overcome the cited prior art, put the instant amended claims in condition for allowance, and require no additional search and little additional effort on the part of the Examiner.

At the outset, Applicants thank the Examiner and the SPE for the courtesies extended to Applicants undersigned representative during the June 1, 2009 telephone interview, the substance of which has been incorporated into the following remarks.

Applicant respectfully traverses the rejection of claims 1, 4 – 10 and 12 under 35 USC §103 as being unpatentable over US patent 5,650,102 (Hagedorn) in view of Chadwick et al. and the further rejections of claims 11 and 13 as being unpatentable over Hagedorn in view of Chadwick et al., in further view of US patent 4,886,656 (Obayashi) and US patent 5,292,102 (Roberts), respectively.

More specifically, Hagedorn relates to a process for the preparation of microcapsule dispersions by an interface polyaddition process in which an oil-in-water emulsion is prepared from an oily phase, which comprises the substance to be encapsulated and a lipophilic substance capable of polyaddition, and an aqueous phase, and the reaction partner required for the polyaddition is then added to the aqueous phase. Hagedorn et al. teaches that capsules with smaller particle sizes are obtained, with a saving in emulsifying energy, if an oil-soluble emulsifier is added to the oily phase before the emulsification. The gist of Hagedorn is apparently due to the emulsifier being in the oil phase prior to emulsification, rather than being in the aqueous phase as was done previously.

The Examiner will appreciate that in order for the emulsifiers of Hagedorn to achieve their effect, they must locate at the oil/water interface. In contrast, the bioperformance-enhancing

adjuvant of formula (I) specified in the compositions of the present invention is not located at the oil/water interface; instead it resides within the capsules. Moreover, the adjuvant of formula (I) has little or no surfactant properties and has a Hydrophile / Lipophile balance of 9 or less.

There is nothing in Hagedorn which would motivate one of ordinary skill to consider placing a bioperformance-enhancing adjuvant of formula (I) which has little or no surfactant properties and has a Hydrophile / Lipophile balance of 9 or less inside a microcapsule. Nor would there be a reasonable expectation of success in making such a modification to the process of Hagedorn et al.

Furthermore, there is nothing within either of the secondary references Chadwick, Obayashi or Roberts that would lead one of ordinary skill to modify Hagedorn and place a bioperformance-enhancing adjuvant inside a microcapsule.

In view of the foregoing amendments and arguments, a favorable reconsideration and a withdrawal of the § 103 rejection are respectfully requested. Applicant submits that the present claims are allowable over the cited art and respectfully request a Notice of Allowance.

Respectfully submitted,

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